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# WORKING GROUP ON INDIGENOUS POPULATIONS

# A PERMANENT FORUM IN THE UNITED NATIONS FOR INDIGENOUS PEOPLE

Report by the secretariat

## I. INTRODUCTION

1. The recommendation to consider the establishment of a permanent forum for indigenous people in the United Nations system was made in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights. The General Assembly in its resolution 48/163 of 21 December 1993 endorsed the recommendation and requested the Commission on Human Rights to give priority consideration to the question.

2. By its resolution 1994/28 of 4 March 1994, the Commission on Human Rights requested the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to express their views pertaining to the possibility of establishing a permanent forum for indigenous people and to transmit to the Working Group on Indigenous Populations contributions received together with a technical note addressing institutional issues. In the same

resolution the Working Group was requested to give priority consideration to the possible establishment of a permanent forum for indigenous people and to submit its suggestions for alternatives, through the Sub-Commission on Prevention on Discrimination and Protection of Minorities, to the Commission on Human Rights at its fifty-first session.

3. The present document contains the technical note prepared by the secretariat in accordance with Commission on Human Rights resolution 1994/28. Written suggestions transmitted by Governments and indigenous organizations are contained in addenda to the present document.

## II. PURPOSE OF A PERMANENT FORUM

4. The recommendation to consider the establishment of a permanent forum for indigenous people is linked, inter alia, to the decision to proclaim an International Decade of the World's Indigenous People. The World Conference, for example, recommended the establishment of such a forum in the framework of the proposed international decade and the General Assembly made its request to the Commission on Human Rights in its resolution proclaiming the Decade. It may be inferred that the establishment of a permanent forum is, inter alia, to promote the goal of the Decade which as stated by the General Assembly is "the strengthening of international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health". The same resolution also invites Governments "to ensure that activities and objectives for the Decade are planned and implemented on the basis of full consultation and collaboration with indigenous people".

5. Given these two elements, it may be considered useful to consider whether one purpose of the proposed permanent forum could be to contribute to the strengthening of international cooperation in the areas referred to in the General Assembly resolution on the basis of full consultation and collaboration with indigenous people.

6. In this regard, note may be taken of recent developments in other parts of the United Nations system, in particular concerning recommendations to involve indigenous people in the process of planning and implementation of projects. The United Nations Conference on Environment and Development in chapter 26 of the Programme of Action (Agenda 21) states, inter alia, that United Nations organizations and other international and finance organizations should, draw on the active participation of indigenous people and their communities, incorporate their values, views, and knowledge in resource management and other policies and programmes that may affect them. Agenda 21 suggests that an annual interorganizational coordination meeting in consultation with Governments and indigenous organizations take place (A/CONF.151/26, vol. III). The World Bank has adopted Operational Directive 4.20 of September 1991 in which it recognizes the need for "culturally appropriate development based on full consideration of the options preferred by the indigenous people affected by the project".

7. Note may also be taken of the range of suggestions and comments made by indigenous delegates at the inauguration of the International Year of the World's Indigenous People in New York on 10 December 1992, as well as at the

forty-ninth session of the Commission on Human Rights and the World Conference on Human Rights. These included the proposal to establish a Commission on Indigenous Peoples within the United Nations, an advisory body, a permanent seat for indigenous people, an office for indigenous affairs, a High Commissioner for Indigenous Peoples, and a suggestion that observer status be granted to one or more indigenous organization at the General Assembly. Many indigenous organizations spoke generally about making a permanent place for indigenous peoples and enhancing their participation in United Nations forums.

8. Bearing in mind the points made by indigenous people at United Nations meetings as well as the resolutions referred to above, a number of objectives for the proposed permanent forum may be discerned. A new forum might provide an opportunity for indigenous peoples:

(a) To take part in decision-making in the United Nations system;

(b) To offer advice to the appropriate organs and agencies of the United Nations system on matters of concern to them, particularly in areas such as development, health, environment and culture;

(c) To present information on violations of human rights with a view to receiving attention and action by the relevant bodies and mechanisms, including possibly the monitoring of the implementation of the declaration on the rights of indigenous peoples;

(d) To engage in dialogue with States and to elaborate research and other activities of mutual interest.

9. It might also be useful to consider whether the proposed permanent forum could play a role in advancing the objectives of the Decade in a direct way. The programme of activities of the Decade will hopefully be approved by the General Assembly at its forty-ninth and fiftieth sessions and the designated coordinating body, the Centre for Human Rights, charged with the execution of the programme within the limited resources available. However, the proposed permanent forum may be in a position to offer advice and guidance to the Coordinator on programme planning or implementation and in identifying priorities for the Voluntary Fund for the International Decade. Furthermore, in the light of the recommendations of the General Assembly to Governments and indigenous peoples to establish national committees for the Decade and to United Nations agencies to appoint focal points on indigenous people, the proposed permanent forum might address its suggestions, recommendations and advice, through the Coordinator, to these newly created institutions.

10. Finally, it is clearly desirable that the proposed permanent forum be an effective body which offers something new to United Nations activities and contributes to practical and measurable improvements in the well-being of indigenous peoples. It is not in the interest of Governments, indigenous people or the overstretched United Nations Secretariat to establish a forum whose advice and recommendations are ignored and its decisions unrealizable because of lack of resources or of consensus among the key partners.

## III. THE WORKING GROUP ON INDIGENOUS POPULATIONS AND ITS RELATIONSHIP WITH THE PROPOSED PERMANENT FORUM

11. In order to avoid duplication of work and waste of resources, any proposed new forum within the United Nations should address areas of activity currently undeveloped. For these reasons, it may not be desirable for the proposed permanent forum to take on tasks currently dealt with under the mandate of the Working Group on Indigenous Populations. The two-fold mandate of the Working Group is expressed in Economic and Social Council resolution 1982/34 as:

(a) To review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) To give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

12. In addition to the review of developments and the evolution of international standards, the Working Group has over the years considered a number of other issues. These include the question of treaties, agreements and other constructive arrangements between States and indigenous peoples, the Voluntary Fund for Indigenous Populations, recent meetings and seminars, and the International Year of the World's Indigenous People. Since its establishment in 1982, the agenda of the Working Group has evolved and broadened considerably in an effort to cover matters of interest and concern to indigenous peoples. In practice, the Working Group has become the primary forum within the United Nations system for consideration of this question and its advice is increasingly sought by its parent bodies such as the Commission on Human Rights and the General Assembly. It will be necessary to consider carefully the future division of labour between the Working Group and the permanent forum. One possibility might be to let the Working Group take care of all human rights aspects while the permanent forum could deal with other issues such as development, culture, environment and health.

13. Furthermore, the Working Group on Indigenous Populations has begun its own reflection on its future role. The Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, submitted a note on the question at the eleventh session of the Group (E/CN.4/Sub.2/AC.4/1993/8) and Mr. Miguel Alfonso Martínez, a member of the Working Group, is due to present further suggestions and comments in a note to its twelfth session (E/CN.4/Sub.2/AC.4/1994/10). The World Conference on Human Rights recommended that the Commission on Human Rights "consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on

the rights of indigenous people". Neither these initiatives nor the completion of the drafting of the declaration should bring into doubt the status of the Working Group which is authorized by the Economic and Social Council to meet annually for up to five days. It will, therefore, continue to hold meetings on this basis.

## IV. AUTHORITY TO WHICH THE PERMANENT FORUM MIGHT REPORT

14. Consideration will need to be given to where in the United Nations system the proposed permanent forum would be placed. Within the complex organigram of commissions, committees, ad hoc bodies, expert consultative groups, working groups and other entities which make up the United Nations Organization, for the purposes of this discussion four levels may be considered: the General Assembly, the Economic and Social Council, its functional Commissions and their subsidiary bodies, of which the Sub-Commission on Prevention of Discrimination and Protection of Minorities is one. Without prejudice to the discussion which will take place at the twelfth session of the Working Group on Indigenous Populations, it may be observed, on the one hand, that the treaty bodies which report to the General Assembly or the Economic and Social Council are established by the International Conventions on Human Rights which are binding legal instruments for those Governments which have ratified them. It may not be thought useful to make comparisons with such bodies since no such binding legal instrument on indigenous rights exists. On the other hand, if consideration is given to a permanent body reporting to a subsidiary body of a functional commission, it may not constitute a significant change from the present arrangement by which the Working Group on Indigenous Populations reports to the Sub-Commission.

15. For these reasons, attention may perhaps be focused at the levels of the Economic and Social Council and the functional commissions. The subsidiary machinery of the Economic and Social Council includes functional commissions such as the Commission on Human Rights, the regional commissions, and standing committees and expert bodies. The last two groups may be of interest since they include committees whose members are nominated by Governments (Committee on Natural Resources) or by the Secretary-General in consultation with Governments (Committee for Development Planning). Article 68 of the Charter of the United Nations empowers the Economic and Social Council to set up commissions in the economic and social fields for the promotion of human rights.

16. If consideration is to be given to the proposed permanent forum reporting to one of the functional commissions, it may be thought appropriate to examine the Commission on Human Rights or the newly established Commission on Sustainable Development. The former has under its authority the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a body of 26 independent experts nominated by Governments and elected by the Commission on Human Rights, as well as a number of working groups. The working groups of the Commission have been established to draft new legal instruments or, as in the case of the Working Group on the Right to Development, to consider ways of enhancing implementation of an adopted international standard. It might also be considered possible to create a permanent forum reporting to two functional commissions, as appropriate, so

that human rights on the one hand and development and environmental matters on the other are channelled to the appropriate body.

17. The Working Group in its discussions on this question may wish to consider whether the permanent forum could not act as an advisory body reporting directly to the Secretary-General or another high-level official such as the High Commissioner for Human Rights. It may be noted in this regard that the Secretary-General has recently established a high-level advisory board on sustainable development. However, such an advisory board may not be considered a permanent forum as such as it is directly linked to the post of Secretary-General.

18. It might be useful at this point to recall that United Nations organizations responsible for major programme areas of interest to indigenous people are themselves subject to their own separate policy-making bodies. The executive boards or governing bodies of such organizations as the United Nations Development Programme, the United Nations Children's Fund, the World Health Organization, the Food and Agriculture Organization or the International Labour Organisation are, in practice, their policy-making organs. Any permanent forum established by the Economic and Social Council would need to recognize its limitations and to explore ways in which its advice might be made available to the appropriate United Nations agencies.

## V. MANDATE

19. Although no binding legal instrument on indigenous rights has yet been adopted by the United Nations General Assembly, sufficient guidance for drafting the mandate and terms of reference for the proposed forum may exist in the form of General Assembly and Commission on Human Rights resolutions, recommendations of high-level conferences such as the United Nations Conference on Environment and Development and the World Conference on Human Rights, and certain existing declarations and conventions. In addition, the ILO Convention No.169 on indigenous and tribal peoples may also be useful in determining the areas which might fall under the mandate of the permanent forum.

20. As was noted earlier, the Working Group on Indigenous Populations is authorized to pay attention to the evolution of standards and the review of developments pertaining to the human rights of indigenous peoples. It might, therefore, not be advisable under the present circumstances to include standard-setting in the mandate. However, the experience of the Working Group over its 12 years of life is that a range of other matters have been raised on which it is not competent to act. Indigenous delegates have made allegations of human rights violations, expressed concerns about rights which are not protected in existing human rights instruments, and made comments and offered substantive opinions on health, development, environment, education, culture, refugee, social, youth and many other issues. It may be understood that the proposed permanent forum would provide an effective channel for these diverse matters.

21. At the intergovernmental level, a similar expression of interest in the views of indigenous communities has been noted. For example, in a resolution adopted by the World Health Assembly at its 47th session in May 1994, WHO

requested its regional offices to work, along with the Governments of the member States concerned, with indigenous people, including by establishing a core advisory group of indigenous representatives with special knowledge of the health needs and resources of their communities.

22. Given the interest in a permanent forum demonstrated by Governments, the United Nations system and indigenous organizations themselves, it may be considered possible to elaborate, following consultations, an agenda for the proposed forum which accommodates the diverse interests and concerns. The proposed permanent forum might also be empowered to establish working groups of experts on questions of concern such as health or environment, or even regional working groups.

23. The terms of reference for such a forum, especially if human rights questions are discussed, will also need to be developed through a consultation process. It would not be desirable that the proposed permanent forum consider human rights questions which are dealt with by the treaty bodies or by bodies such as the Commission on Human Rights. Furthermore, in the absence at the present time of a United Nations instrument recognizing the specific rights of indigenous peoples, there would not be a possibility of considering individual cases. However, these qualifications made, indigenous people have expressed their hope that a better means of protecting their human rights will be established. This is particularly important since indigenous people do not have access to the major human rights meetings because most of their non-governmental organizations do not enjoy consultative status with the Economic and Social Council.

## VI. AUTHORITY OF THE PERMANENT FORUM

24. All United Nations forums have the possibility of taking decisions and making recommendations. It will, therefore, be necessary to consider the kinds of decisions and the nature of the recommendations to be made by the permanent forum, and the means by which these are to be carried out. Equally, it will be necessary to identify the areas in which the forum would not be given authority to act. Mention has been made of the areas which a permanent forum might examine but the question of what matters it will be empowered to decide upon and what kinds of recommendations will be received by its parent body will need to be determined.

25. With regard to the decisions or recommendations that the permanent forum could be authorized to take, the following might be considered: its agenda, the creation of expert thematic or regional working groups, the appointment of special rapporteurs, the holding of expert meetings, the elaboration of studies, activities under the programme of activities for the Decade, projects supported by the Voluntary Fund for the Decade, action in the area of indigenous peoples that might be undertaken by the High Commissioner for Human Rights, technical and expert advice to other United Nations specialist agencies. Such a list is not exhaustive nor should these matters fall necessarily within the competence of the proposed forum. It may in the long run be advisable to allow the permanent forum to remain as flexible as possible so that it can establish its competence over time as it is able to demonstrate its expertise, usefulness, and capacity to find agreement between the different partners.

## VII. MEMBERSHIP

26. The question of membership of the proposed permanent forum may be considered in the light of the functions and responsibilities attributed to it. Thus, if the permanent forum is to be established to provide expert advice to the United Nations system, it might be assumed that it will draw upon the experiences of indigenous and other experts. If the forum is to take decisions or make recommendations which require implementation by the United Nations, it will need the participation and approval of Member States. It may also be asserted that if indigenous people are not a part of the membership of the proposed permanent forum they will probably have little interest or confidence in it. Equally, if States, the constituency that makes up the United Nations, are not members, the forum will not be given any authority to take decisions or offer recommendations. Given this perspective, a range of possibilities may be envisaged which brings together not only representatives of Governments and indigenous organizations but, if deemed useful, could also include other interested parties such as independent experts on human rights (such as those composing the Sub-Commission) or on health, education or environment, or non-governmental organizations having a long-standing interest in indigenous affairs.

27. It may be noted that the United Nations has experience of establishing different committees and expert technical bodies to allow them to draw upon the wealth of knowledge that exists in academic institutions, the scientific community, specialist non-governmental organizations, national institutions and other such groups or bodies. The Committee on Crime Prevention and Control, before its name and terms of reference were changed in accordance with ECOSOC resolution 1992/1, was composed of experts possessing the necessary qualifications and professional knowledge; the membership of the human rights treaty bodies is also composed of persons with a high moral character and recognized competence in the field of human rights. It may also be noted that the United Nations technical meetings and expert seminars often bring together experts from all fields in order to broaden the information and expertise available. Representatives of indigenous people have, thus, been invited by the Secretary-General to participate together with Governments in technical meetings on questions of concern. This was the case, for example, for the United Nations Technical Conference on Practical Experience in the Realization of Sustainable and Environmentally Sound Self-development of Indigenous Peoples (E/CN.4/Sub.2/1992/31 and Add.1). Note may also be taken of the terms of reference of the Board of Trustees of the Voluntary Fund for Indigenous Populations established in accordance with General Assembly resolution 40/131 of 13 December 1985 which authorizes the Secretary-General to appoint Board members with experience in indigenous matters, at least one of whom should be a representative of a widely recognized organization of indigenous people.

28. Expert committees are also established in other parts of the United Nations system to provide advice on specific areas of work. FAO and UNESCO, for example, have created advisory groups which include non-governmental organizations. Of interest also are organizations such as ILO whose governing body is composed of Governments, and employers' and employees' organizations, and the International Union for the Conservation of Nature (IUCN) whose membership comprises States, governmental agencies, and

national and international non-governmental organizations. The recently established Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean may serve as an example of trying to integrate indigenous people into the decision-making process. Under article 3.2 (ii) of the Agreement establishing the Fund, the General Meeting is composed of government delegates and one indigenous peoples' delegate for each State of the region that is a member of the Indigenous Fund, accredited by his Government following the relevant consultations with the indigenous organizations of the State.

29. An additional consideration for determining the membership of the proposed permanent forum will be the procedure that is established for appointment or election. In the case of certain meetings or committees, the responsibility for appointing experts is given to the Secretary-General, sometimes but not always following consultations with States. In other cases, States, nominate experts for subsequent election by a United Nations body. This is the case of the Sub-Commission whose members are nominated by States and elected by the Commission on Human Rights. In other cases, States, in accordance with an agreed rotation and equitable geographical distribution, nominate experts without recourse to an electoral process. As is the case for the Latin American and Caribbean Development Fund for Indigenous Peoples, Governments nominate indigenous delegates following consultations with their organizations. It may also be thought desirable to invite indigenous organizations to elect or select representatives.

30. However, these procedures apart, some consideration may be given to the practices developed in the Working Group on Indigenous Populations. The Chairperson, Ms. Erica-Irene A. Daes, and members of the Working Group have welcomed the participation of indigenous experts and representatives selected by the indigenous organizations themselves. This is also the established practice followed by the Board of Trustees of the Voluntary Fund. Indigenous people have appreciated the open character of their participation in the Working Group. It might be thought useful to examine the working practices of the Working Group to see whether such independent selection of representation by the indigenous organizations themselves cannot also be formalized in a way that allows for a similar procedure for election of the membership of the proposed permanent forum.

## VII. PARTICIPATION OF INDIGENOUS ORGANIZATIONS

31. Another question of relevance is the procedures that would be established for the proposed permanent forum to allow participation by observer States, the United Nations system, indigenous organizations and non-governmental organizations. Two questions may be raised: firstly, would indigenous representatives from organizations without consultative status with the Economic and Social Council be authorized to provide written information, make oral statements, and fully participate in the meeting; and second, given the extremely restricted economic circumstances of most indigenous organizations, would funds be available to assist indigenous people to travel to the sessions of the permanent forum?

32. Once again, consideration may be given to the procedures developed during the 12 years of activity of the Working Group on Indigenous Populations. In

order to assist the Working Group in its work, written information and oral statements have been accepted from indigenous organizations in an open spirit. This has been of particular value as 11 of the 12 indigenous organizations with consultative status have their headquarters in a developed country and the Working Group considered it important to ensure equitable geographical distribution and participation of indigenous organizations. As regards the problems that may be encountered by indigenous organizations wishing to participate in the proposed permanent forum but lacking resources to do so, it may be desirable to consider how the Voluntary Fund for Indigenous Populations may be used to assist them.

## IX. SECRETARIAT IMPLICATIONS OF A PERMANENT FORUM

33. The establishment of a permanent forum has implications for the secretariat which will also need to be considered. A permanent forum will require additional funds to cover the travel costs and daily subsistence allowances of members, the additional conference services expenses associated with preparation, translation and printing of documentation, interpretation, and other support activities, as well as the staff necessary for servicing and following up on decisions. It will also be necessary to ensure that any future forum hold its sessions at a suitable and practical date taking into account the calendar of human rights meetings.

34. Finally, it may be appropriate to note the ongoing preparations to enhance staffing for indigenous issues and to establish an indigenous peoples unit within the Centre for Human Rights, in accordance with General Assembly resolution 48/163 and Commission on Human Rights resolution 1994/26. It may be envisaged that the measures being taken by the United Nations Secretariat to increase resources in this area in order to respond to the growing interest and workload, as well as to implement the programme of activities for the Decade, will be further strengthened in the event of a permanent forum being established.

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